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No. 06-1517

IN THE

Supreme Court of the United States

NICHOLAS PAPPAS, ET AL.,

Petitioners,

v.

GREEK ORTHODOX ARCHDIOCESE OF NORTH AND SOUTH AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To the Supreme Court of the State of New York,
Appellate Division, First Department

REPLY BRIEF FOR PETITIONERS

Edward McGlynn Gaffney, Jr.
Counsel of Record
Valparaiso University School of Law
656 S. Greenwich Street
Valparaiso, IN 46383
219-465-7860
Attorney for the Petitioners

[July 30, 2007]

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Reply Brief for Petitioners

I. Respondent's Statement of the Case Focuses on the Irrelevant and Contains Numerous Argumentative Assertions Unsupported by the Record or Contradicted by Facts and Documents in the Record.

A. The first seven pages of the Brief in Opposition, styled "Statement of the Case," are not a statement of the case. They bear not the slightest resemblance to a dispassionate recitation of facts, but are instead an argumentative recital of assertions. Frequently there is no support for these assertions in the record. Indeed, the opening seven pages of the Opposition contains not a single reference to the record or to the petition.

B. When an advocate strays beyond the record, factually erroneous or misleading statements often ensue. This regrettably is the case here. If the Court grants the petition, we will document in the merits briefs many misrepresentations of record evidence indulged in by the Respondent. We offer now a few examples.

1. First, we note *the irrelevant*. In the first paragraph Respondent asserts: "Petitioners seek to dictate the fashion in which the Archdiocese is governed." Opp. 1. A more accurate statement of the record in this case is that Petitioners seek declaratory relief on a *purely procedural matter: the manner of charter revision under generally applicable New York law that governs all hierarchical churches and under specific contractual terms mutually agreed upon by the Archdiocese and the Ecumenical Patriarchate in 1977*. Pet. 5.

Respondent suggests that Petitioners ignore ecclesiastical matters in the purported charter of 2003 "such as providing for the elevation of bishops to the higher rank of Metropolitan, establishing criteria for the elevation of a priest to the position of

Metropolitan or Archbishop, and setting forth rules for the oversight of monasteries." Opp. 1. Far from ignoring these matters, the petition clarified that not one of them is contested by the parties at this stage of the litigation. Hence it is accurate to state: "This case involves *no ecclesiastical question of religious doctrine or canonical discipline*." Pet. 3.

Respondent states: "The only material differences between the 2003 Charter and the 1977 Charter are purely ecclesiastical.... There are no other material differences between the two Charters." Opp. 5-6. These two sentences are inaccurate both for what they omit and for what they imply. They carefully omit the one and only aspect of the 1977 charter that still impels Petitioners to seek a declaration of rights: "whether recent proposed amendments to the Respondent's charter comply with the contractual obligation undertaken by the Archdiocese and the Ecumenical Patriarchate when in 1977 they voluntarily adopted the following procedure for amending the corporate charter or constitution: 'The charter herein may be revised upon the request of the Archdiocesan Clergy-Laity Congress [hereafter CLC] as the need therefor arises. Revisions thereto shall be submitted to the Ecumenical Patriarchate for approval and ratification.'" Pet. 3, citing 1977 charter, Art. XXIV. Pet. App. 20a. Respondent's elision of Article XXIV obscures the main point – indeed the only point – at issue in this litigation.

All of the intervening material (numerated (i)-(vi) in Opp. 5-6; see also at 11) describing other contents of the purported charter of 2003 is irrelevant because it repeats the false implication that the parties are in conflict over the nomenclature of ecclesiastical titles for clerics, diocesan boundaries, rules about monasteries, or other matters of a purely ecclesiastical character. Respondent knows full well that neither side is arguing over any of these points. As we noted in the petition: "The only issue here is whether the Archdiocese may proceed with a new charter about such matters without the requisite deliberative process of the [CLC] and without compliance with New York corporation

law to which the church is subject, such as standard elements of due process, including adequate notice...." Pet. 23 n. 14. Thus the nub of this controversy has been reduced to two legal issues: the *failure to comply with generally applicable norms of state law on revision of corporate charters* (which the Archdiocese implicitly accepted when it elected voluntarily to become incorporated under New York law in 1921) and the *breach of contract that occurred when the Ecumenical Patriarchate altered the charter unilaterally*, in violation of the critical procedural text on charter revision (Article XXIV) (which the Archdiocese and the Patriarchate agreed to when they adopt the 1977 charter). Pet. 4.

2. We turn now to *misrepresentations of record evidence.* Respondent falsely asserts that "The Greek Orthodox Church is one of several 'autocephalous,' or ecclesiastically independent, churches of the Eastern Orthodox tradition." Opp. 2. Respondent knows well that the Greek Orthodox Church is *not* an "autocephalous" church, R. 306-23, and that the Patriarchate lacks jurisdiction over any of the four autocephalous churches that, with the Patriarchate, comprise the Greek Orthodox Church, R.281-82, 316, 322-23.

Respondent sometimes states an important truth: "The Greek Orthodox Church is a hierarchical church." Opp. 2. And then Respondent veers off in a direction unsupported in fact and in this record: "ultimate control and authority for all matters within the church rests with the Holy Apostolic and Ecumenical Patriarchate of Constantinople." Id. It begs the central question of this case to imply that the authority of the Patriarchate over "all matters" includes the power to revise the Archdiocesan constitution (charter) unilaterally, and that this power is unconditional in the sense that it need not comply either (a) with generally applicable New York law governing charter revision or (b) with the specific terms of Article XXIV that require approval of a proposed charter by the CLC. Respondent cites no

record support for this claim because the procedural history of the Archdiocesan charters is to the contrary.

Respondent falsely asserts that "The Ecumenical Patriarchate granted the first Charter of the Archdiocese in 1922, and all subsequent Charters." Opp. 4. On the contrary, both the 1922 and 1927 charters of the Archdiocese were adopted first by the CLC and subsequently ratified by the Ecumenical Patriar-chate. R.99, 164, 275-77, 284-96. The 1931 and 1977 charters were proposed by the Patriarchate and subsequently adopted by the CLC. This constant historical practice thus requires not a theological leap, but only a modest empirical historical judgment: when it comes to charter revision, neither the Ecumenical Patriarchate nor the CLC. is the "rubber stamp" of the other. *See* Opp. 14. The approval of both is essential.

Respondent cites Article XXIII of the 1977 charter to support a contrary view, that the Ecumenical Patriarchate has sole authority to "grant a charter." Opp. 12. As Respondent knows full well, however, Article XXIII of the 1977 charter refers to a *draft* document prepared by the Archdiocesan Council, not to a *charter* adopted by the CLC. R. 57, 277-78.

Respondent suggests that our Statement of the Case "rests upon the self-serving and utterly false allegation that the 1977 Charter prohibits the Ecumenical Patriarchate from modifying a proposed Charter before granting it." Opp. 14. *Self-serving*? In our view we serve the Court when we call attention to the one provision in the 1977 charter that is relevant to the questions we presented to the Court. *Utterly false?* How can it be false, let alone utterly so, to identify the portion of the record at the heart of the narrow issue in this litigation? By contrast, throughout the entire Brief in Opposition Respondent ignores generally applicable state law relating to revision of corporate constitutions (charters); it downplays Article XXIV of the 1977 charter (Opp. 14); it distracts the Court from this provision by leading the Court down a blind alley of issues not in contention, (Opp. 1, 6); and it indulges in unseemly attacks upon the bona fides of Petitioners; *contrast* Opp. 6, 11

(Petitioners are "intermeddlers") *with* Pet. 2-3 ("Petitioners are loyal and faithful members" of the Archdiocese and have served often in the CLC, "the highest legislative body of the Archdiocese").

Respondent knows full well that the sole issue of contention in this case is the unilateral elimination of the traditional role played by clergy and laity in the adoption and revision of the constitution (charter) of the Archdiocese. This role is specifically reflected in Article XXIV of the 1977 charter, the only provision as to which Petitioners seek declaratory relief: "*The charter herein may be revised upon the request of the Archdiocesan Clergy-Laity Congress as the need therefore arises. Revisions thereto shall be submitted to the Ecumenical Patriarchate for approval and ratification.*" Pet. App. 21a (emphasis supplied).

C. These errors are not trivial. They violate two cardinal rules of appellate procedure. First, many of these assertions violate the rule that on a motion to dismiss, all facts asserted in the Complaint must be accepted as true and be given the benefit of every possible favorable inference. This rule is not only required under New York practice, Pet. 2, but is also the uniform standard in federal practice, *see, e.g., Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S.Ct. 2499 (2007) and hence cannot be ignored in the disposition of this petition.

Second, the unsupported assertions violate the rule against expansion of the factual record developed below; *see, e.g., Adickes v. Kress & Co.*, 398 U.S. 144, 157-58 n. 16 (1970), *Hopt v. Utah*, 114 U.S. 488, 491-92 (1885); *Russell v. Southard*, 12 How. 139, 158-59 (1851). In *Adickes* this Court noted that unsworn submissions such as those inserted into the Brief in Opposition "cannot be properly considered by us in the disposition of the case." 398 U.S. 144, 157-58 n. 16.

Respondent has mischaracterized what remains in dispute. The questions presented do not involve *any* ecclesiastical matters, and do not require the Court to attempt to resolve *any* doctrinal or canonical dispute. The Court should not accept the misrepresentations and distractions from the clean legal

issue in this case. We turn now to the division and confusion among the lower courts on the important issue of church autonomy, which requires the Court's attention.

II. The Reasons for Denying the Petition Offered by the Respondent Misstate Both the Position Argued by Petitioners and the Currently Confused State of the Law in State Tribunals after *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) and *Jones v. Wolf* (1979).

When Respondent turns to the law, its misstatements of our positions and of the state of the law of church autonomy are as egregious as its misstatements of the facts in this case.

A. Respondent characterizes the legal position of the Petitioners as follows: "Ignoring the fundamental notion of separation of church and state, Petitioners ask the civil courts to direct the way in which the Archdiocese governs itself." Opp. 7. On the contrary, Respondent imperils traditional constitutional restraints upon civil courts with respect to religious matters by enticing courts into accepting *theological propositions* about the unconditional authority of the Ecumenical Patriarchate to amend a corporate constitution at will, without regard for the statutory procedures for such amendment or for the role expressly stated for clergy and laity in Article XXIV of the 1977 charter.

By contrast, Petitioners have emphatically urged the wisdom of judicial self-restraint in relation to the rights of religious communities to govern themselves in various ways deemed proper by religious communities. But we respectfully suggest that the time has come for the Court to offer fresh guidance to lower courts about a principled way in which to resolve disputes that arise within religious communities. Repeatedly throughout this litigation we have urged adherence to the century-old practice of deference either to hierarchical or congregational forms of government. We seek to preserve the full value of the free exercise and nonestablishment principles of the First Amendment by insisting that the Court should neither enlarge nor diminish the role traditionally played by priests and laity in

the day-to-day operation of a church, but should simply accept religious communities as it finds them described in documents that they themselves have agreed to. And we note that the Court has disfavored religious claims for judicial immunity from generally applicable norms, such as state law governing all religious corporations and general principles of contract interpretation as they apply to all voluntary agreements, including those of religious communities. *Employment Div. of Oregon v. Smith*, 494 U.S. 872 (1990).

Our position does not, as Respondent suggests, abandon the cases from *Watson v. Jones* to *Jones v. Wolf*. Not one of those cases held that the two principal categories of church governance – hierarchical and congregational – are hermetically sealed or diametrically opposed. Thus a community may be organized on a hierarchical principle, yet may surely agree voluntarily to structure its self-governance according to the laws of a state in which it voluntarily incorporates, and may surely agree to contractual arrangements in its corporate documents that assign important roles to clergy and laity, including a procedure insuring the voice and vote of clergy and laity before revision of the charter or other organic document of the church. That, in fact, is precisely what the Patriarchate and Archdiocese have been doing for decades through a mutual agreement on a procedure requiring meaningful participation of the Patriarchate and the CLC in any revision of the Archdiocesan constitution (charter).

In our view it is not the business of civil courts to make theological judgments on the polity or mode of governance of any religious community, whether hierarchical or congregational." *See, e.g.*, Pet. 25-28. Instead, we have proposed that civil courts should stick to what the Constitution permits and requires: evenhanded treatment of all claimants concerning a breach of contract on aspects of self-governance to which religious communities freely elect to bind themselves by contract – as the Ecumenical Patriarchate and the Archdiocese clearly did by voluntarily agreeing to enter into the charters of 1922, 1927, 1931, and 1977. It is not the

Petitioners, but the Respondent who would diminish religious freedom by their suggestion that no hierarchical community may voluntarily commit itself to a specific way of governing itself that includes meaningful participation of priests and laity in the ongoing life of the church. "Hierarchy" is not so wooden a term that rigid bifurcation of legal categories – (*either* hierarchical *or* congregational) is its only or best safeguard. Nor does the Constitution deny to churches freedom to contract about ways in which they wish to govern themselves.

B. Respondent urges several comforting thoughts on the current state of the law on church autonomy: that the Court's jurisprudence in this area is well settled and the lower court applied it faithfully, Opp. 17-20, that the state appellate courts are not divided on church autonomy, Opp. 20-23, and that the lower court did not intrude into religious matters, Opp. 23-24. Unfortunately, none of these submissions is correct.

1. Respondent claims on the one hand that there is no tension between *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976) (stressing deference to hierarchical authority in a case involving a full-blown canonical dispute) and *Jones v. Wolf*, 443 U.S. 595 (1979) (allowing application of "neutral principles of law" to resolution of secular aspects of intrachurch disputes, whether church polity is hierarchical or congregational). But Respondent runs into trouble as soon as it begins to explain why one case applies in this instance and the other does not. Opp. 8-17. The tension between these cases is currently unresolved, but this tension is reconcilable without overruling either precedent. The probability that the Court can now achieve a more harmonious opinion on church autonomy than it did in either *Milivojevich* or *Jones v. Wolf* makes this case certworthy.

2. Respondent maintains that there is no conflict between the decision of the lower court in this case *prohibiting* any interpretation of Article XXIV of the 1977 charter and the general rule allowing and even *requiring* inspection and interpretation of organic church documents in many other states. Opp. 17-20. Respondent concedes that

"courts may inspect church charters or constitutions and by-laws," at least in "church property disputes." In favor of this "unremarkable proposition" Respondent argues that "the court properly applied the neutral principals [sic] of law doctrine to determine ownership of the property." Opp. 17.

This concession by the Archdiocese has two important consequences for the present proceeding. First, the Archdiocese overlooks the profound connection between the procedural provision on charter revision clearly at issue here and ownership of church property. If, as Respondent suggests, the Ecumenical Patriarchate may revise the corporate constitution (charter) without following the procedures set forth in New York corporation law and without the approval of the CLC, the "highest legislative body of the Archdiocese," Pet. 3, what would impede the Patriarchate from "granting a charter" that would abolish the CLC altogether and require all parishes of the Archdiocese to convey all church property to the Patriarchate?

Second, if neutral principles of law may be used to resolve a property matter, why should they not be used in a contract dispute? When confronted with *Avitzur* v. *Avitzur*, 58 N.Y.2d 108 (1983), in which the New York Court of Appeals used neutral principles of contract law to determine an issue of specific performance of a *religious contract* of marriage, Respondent tries to distinguish *Avitzur* by noting that it "did not involve a decision from the highest authority of a hierarchical church." Opp. 20. Well yes, but that is precisely the flaw of privileging one form of self-governance over another. When we note that the principal difficulty of this position is that it contradicts both free exercise and nonestablishment, Pet. 6-7, 17, 29, Respondent denigrates our view as "frivolous." Opp. 23. On the contrary, we think that it is inconsistent to apply contract law to the *religious law* of a congregational community, but not to a *procedural provision in the instrument of corporate governance* of a hierarchical community. This incoherence can be rectified by reflection on the nondiscrimination principle recently announced by

the Court in other First Amendment contexts. This probability makes this case certworthy.

3. Respondent maintains that the state appellate courts are not divided on the issue of church autonomy. Opp. 20-23. Neither our reading of the cases nor the judgment of commentators, Pet. 10, confirms this rosy portrait of harmony. The petition illustrates only some of the "inconsistency and unpredictability" described by commentators on the church autonomy cases involving disposition of competing property claims. Pet. 13-22. Confident that an independent reading of the cases we cited in the petition will disclose considerable confusion after 28 years of silence by the Court[1] on this issue of national importance, we think that this probability makes this case certworthy.

4. Respondent maintains that the lower court did not intrude into religious matters. Opp. 23-24. One of the most egregious historical and legal errors that the Archdiocese has repeated throughout this litigation is that the Ecumenical Patriarchate has unconditional authority to grant and to revise charters unilaterally, without regard for state law or for its own contractual obligations. Respondent invites this Court to make a leap of faith in its theological judgment. Since this Court has repeatedly warned against excessive entanglements of courts in religious matters, *see Thomas v. Review Bd.*, 450 U.S. 707 (1981), it is likely that the Court will decline the Archdiocese's invitation to meander into the theological thicket, which is unnecessary on this record and impermissible under the First Amendment. This probability makes this case certworthy.

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[1] In the Brief in Opposition, Opp. 23, Respondent misapprehends our comment on the "inattentiveness" of the Court to church autonomy, which clearly referred not to the cases from *Watson v. Jones* to *Jones v. Wolf*, but to the steady denial of certiorari by the Court in all such cases since *Jones v. Wolf*. For ease of reference we list these cases denying certiorari in Appendix A.

Conclusion

For the foregoing reasons and those set forth in the petition, the petition for certiorari should be granted.

Respectfully submitted,

Edward McGlynn Gaffney, Jr.*
Valparaiso Univ. School of Law
656 S. Greenwich Street
Valparaiso, IN 46383
219-465-7860
* *Counsel of Record*

APPENDIX

Appendix A

Church Autonomy Cases in which Certiorari Has Been Denied Since *Jones v. Wolf* (1979)

First Missionary Baptist Church v. Rollins, 199 S.W.3d 823 (Mo. App.2004), *mot. granted and cert. denied*, 167 L. Ed. 2d 244 (No. 06-882, 2007); *Tubiolo v. Abundant Life Church, Inc.*, 167 N.C. App.324, 605 S.E.2d 161 (2004), *cert. denied*, 126 S. Ct. 350 (2005); *Lott v. East Shore Christian Center*, 908 So. 2d 922 (Ala.), *cert. denied*, 126 S. Ct. 416 (2005); *Kliebenstein v. Iowa Conference of the United Methodist Church*, 663 N.W.2d 404 (Iowa), *mot. granted and cert. denied*, 540 U.S. 977 (2003); *Bhatti v. Singh*, 148 Ohio App.3d 386, 773 N.E.2d 605, *cert. denied*, 537 U.S. 1194 (2003); *Shepherd of the Valley Lutheran Church v. Hope Lutheran Church*, 626 N.W.2d 436 (Minn. App.2001), *cert. denied*, 534 U.S. 1082 (2002); *Arkansas Presbytery of the Cumberland Presbyterian Church v. Hudson*, 344 Ark. 332, 40 S.W.3d 301, *cert. denied*, 534 U.S. 945 (2001); *Shirley v. Christian Episcopal Methodist Church*, 748 So. 2d 672 (Miss. 1999), *cert. denied*, 531 U.S. 821 (2000); *McEnroy v. St. Meinrad School of Theolology*, 713 N.E.2d 334 (Ind. Ct. App.1999); *trans. denied*, 726 N.E.2d 313 (Ind. 1999), *cert. denied*, 529 U.S. 1068 (2000); *East Lake Methodist Episcopal Church, Inc. v. Trustees of the Peninsula-Delaware Annual Conference of the United Methodist Church, Inc.*, 731 A.2d 798 (Del. 1999), *cert. denied*, 528 U.S. 1138 (2000); *Weaver v. Wood*, 2 Mass. L. Rep. 522 (Mass. Super. Ct. 1994), *remanded by* 425 Mass. 270, 680 N.E.2d 918 (1997), *cert. denied*, 522 U.S. 1049 (1998); *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419 (D.C. 1996), *cert. denied*, 520 U.S. 1155 (1997); *Croatian*

Roman Catholic Congregation of the Holy Trinity Church v. Wuerl, 447 Pa. Super. 208, 668 A.2d 1151, *cert. denied*, 519 U.S. 1114 (1997); *Mother African Union First Colored Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church*, Civ. Action No. 12055 (Del. Ch. May 16, 1991), *cert. denied*, 519 U.S. 1042 (1996); *Singleton v. Christ the Servant Evangelical Lutheran Church*, 541 N.W.2d 606 (Minn. App.), *cert. denied*, 519 U.S. 870 (1996); *Basich v. Board of Pensions, Evangelical Lutheran Church*, 540 N.W.2d 82 (Minn. App.1995), *cert. denied*, 519 U.S. 810 (1996); *Green v. United Pentecostal Church International*, 899 S.W.2d 28 (Tex. App.1995), *cert. denied*, 517 U.S. 1134 (1996); *Primate & Bishops' Synod of the Russian Orthodox Church Outside Russia v. Russian Orthodox Church of the Holy Resurrection*, 35 Mass. App. 194, 617 N.E.2d 1031 (1993), *aff'd by* 418 Mass. 1001, 636 N.E.2d 211 (1994), *cert. denied*, 513 U.S. 1121 (1995); *American Union of Baptists v. Trustees of the Particular Primitive Baptist Church*, 335 Md. 564, 644 A.2d 1063 (1994), *cert. denied*, 513 U.S. 1111 (1995); *Fortin v. Roman Catholic Bishop*, 416 Mass. 781, 625 N.E.2d 1352, *cert. denied*, 511 U.S. 1142 (1994); *Crocker v. Stevens*, 210 Ga. App.231, 435 S.E. 2d 690 (1993), *cert. denied*, 511 U.S. 1053 (1994); *Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific*, 230 Cal. App.3d 480, 281 Cal. Rptr. 396, *cert. denied*, 502 U.S. 1073 (1991); *Williams v. Board of Trustees of Mt. Jezreel Baptist Church*, 589 A. 2d 901 (D.C. 1991), *cert. denied*, 502 U.S. 865 (1991); *Southern Ohio State Executive Offices of Church of God v. Fairborn Church of God*, 61 Ohio App.3d 526, 573 N.E.2d 172 (Greene County 1989), *mot. overruled*, 45 Ohio St. 3d 708, 544 N.E.2d 695 (1989), *cert. denied*, 493 U.S. 1072 (1990); *McDonnell v. Episcopal Diocese of Georgia*, 191 Ga. App.174, 381 S.E.2d 126, *cert. denied*, 493 U.S. 935 (1989); *Presbytery of Beaver-Butler of United Presbyterian Church v. Middlesex Presbyterian Church*, 80 Pa. Commw. 211, 471 A.2d 1271, *rev'd*, 507 Pa. 255, 489 A.2d 1317, *cert. denied*, 474 U.S. 887 (1985); *York v. First*

Presbyterian Church, 130 Ill. App.3d 611, 474 N.E. 2d 716 (1984), *cert. denied*, 474 U.S. 865 (1985); *Reid v. Gholson*, 229 Va. 179, 327 S.E. 2d 107 (1985), *cert. denied*, 474 U.S. 824 (1985), *reh'g denied*, 474 U.S. 1014 (1985); *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465 (Mo. 1984), *cert. denied*, 471 U.S. 1117 (1985); *First Presbyterian Church of Schenectady v. United Presbyterian Church*, 62 N.Y.2d 110, 476 N.Y.S.2d 86, 464 N.E. 2d 454, *cert. denied*, 469 U.S. 1037 (1984); *Grace Evangelical Lutheran Church v. Lutheran Church-Missouri Synod*, 118 Ill. App.3d 151, 73 Ill. Dec. 789, 454 N.E.2d 1038 (1st Dist. 1983), *cert. denied*, 469 U.S. 820 (1984); *Struemph v. McAuliffe*, 661 S.W.2d 559 (Mo. App.1983), *cert. denied*, 467 U.S. 1216 (1984); *Grutka v. Clifford*, 445 N.E.2d 1015 (Ind. App.), *cert. denied*, 465 U.S. 1006 (1984); *Presbytery of Baltimore of United Presbyterian Church v. Babcock Memorial Presbyterian Church*, 52 Md. App. 428, 449 A.2d 1190 (1982); *aff'd* 296 Md. 573, 464 A.2d 1008 (1983), *cert. denied*, 465 U.S. 1027 (1984); *Protestant Episcopal Church v. Barker*, 115 Cal. App.3d 599, 171 Cal. Rptr. 541 (1981), *cert. denied*, 454 U.S. 864 (1981); *Newark v. Burns*, 83 N.J. 594, 417 A.2d 31 (1980), *cert. denied*, 449 U.S. 1131 (1981), *reh'g denied*, 450 U.S. 1027 (1981); *Protestant Episcopal Church v. Graves*, 83 N.J. 572, 417 A.2d 19, *cert. denied*, 449 U.S. 1131 (1981); *Galich v. Catholic Bishop*, 75 Ill. App.3d 538, 394 N.E.2d 572 (1st Dist. 1979); *cert. denied*, 445 U.S. 916 (1980); *Trinity Presbyterian Church v. Tankersley*, 374 So. 2d 861 (Ala. 1979), *cert. denied*, 445 U.S. 904 (1980); *Wheeler v. Roman Catholic Archdiocese of Boston*, 378 Mass. 58, 389 N.E.2d 966 (1979), *cert. denied*, 444 U.S. 899 (1979).